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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,652	12/21/2001	Delwin Jackson	5392	3701

7590

08/13/2003

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 08/13/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10 036652

Applicant(s)

JACMON et al

Examiner

MBL/ey

Group Art Unit

7610

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 6/2/03
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-23 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-23 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 16-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The rejection of record is maintained. Applicant has not addressed amount of inorganic required to achieve the specified kill rate, and absent identification of the inorganic agent, one would be subjected to enormous amount of testing to find which amounts of which in organics would meet the criteria of the claimed kill rate.

Claim ~~16-23~~¹⁶⁻²³ rejected under 35 U.S.C. 102(b) as being anticipated by Matsuno et al 523471.

The rejection of record is maintained.

Applicants arguments that each and every limitation is not in Matsuno are not persuasive-inorganic antimicrobial agents as part of the coatings of surfaces are clearly evident at col.3, lines 35-45 for inorganic agents otherwise not specified in the instant claims, glass, the substrate, as preferred at col.4, lines 47-55) and see example 1 again, of SiO₂.

Claims 1-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Oku et al 5882808.

The rejection of record is maintained.

There is no limitation, in applicants' language to added treatment of the surface coating-the glase of Oku is seen as permitted. Applicant infact subjects the coatings to caustic bathe and heating-there would thus be no sol gel film difference from applicants invention.

Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Sherman-US 20020005145.

The rejection of record is maintained.

What is claimed is a composition, and a surface-applicants arguments are to the effects of that composition when it's tested with a specific test organism-the composition is disclosed, so, the effects would inherently follow, whether the method of determining results is insinuated into the claim language, or not.

Applicant's arguments filed 6/2/03 have been fully considered but they are not persuasive. Applicants arguments have been carefully considered, and addressed above. We are not persuaded that lack of identical language precludes anticipation of the identical composition and surfaces as claimed, even though they were not tested for effects on the particular organism.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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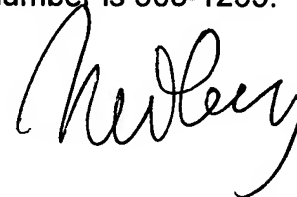
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd
August 11, 2003



NEIL S. LEVY
PRIMARY EXAMINER